No. 92-219

Supreme Court, U.S.
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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1992

CARROLL A. CAMPBELL, JR., GOVERNOR OF SOUTH CAROLINA

Appellant,

v.

NICK THEODORE, et al.,

Appellees.

On Appeal From The United States District Court For The District Of South Carolina

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JURISDICTIONAL STATEMENT AND APPENDIX

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Questions Presented

After the State of South Carolina failed to redistrict its General Assembly and congressional seats following the 1990 census, a three-judge court adopted its own plans and ordered them into effect beginning with the 1992 elections. In the process, the district court characterized this case as one governed by Section 5 of the Voting Rights Act and held that, as a result, the requirements of Section 2 of the Act were not fully applicable. Consequently, the following questions are presented:

1. Is the district court obligated to comply fully with the requirements of Section 2 of the Voting Rights Act in devising its own redistricting plan?

2. When a court seeks only to comply with Section 5 of the Voting Rights Act in devising a redistricting plan for a covered jurisdiction, must the court, nevertheless, comply fully with Section 2 as well, as required by the Attorney General's regulations for the implementation of Section 5?

3. In a state with a long history of racial discrimination, racially polarized voting and denial of minority voting opportunities, does a redistricting plan that provides for majority/minority districts in which equal opportunity is measured by only 50.1% of the black voting age population, satisfy the requirements of Section 2?

4. Did the court err in giving greater deference to the state policy of maintaining county lines than to the federal requirement of racial fairness?

Parties To The Proceeding

The appellant, Carroll A. Campbell, Jr., Governor of South Carolina, is a cross-appellant in this appeal which was brought by the following appellants: Statewide Reapportionment Advisory Committee, D. William Gibson, Bishop Frederick Calhoun James, Rev. Herbert Williams, Willie B. Owens, and South Carolina State Conference of the NAACP Branches. The appellees are Nick Theodore, Lieutenant Governor of South Carolina, Robert J. Sheheen, Speaker of the South Carolina House of Representatives, and James B. Ellisor, Executive Director of the South Carolina State Election Commission. Governor Campbell was a defendant below.

In the consolidated case of Burton v. Sheheen, C.A. No. 3:91-2983-1, the plaintiffs were Michael G. Burton, William P. Collins, III, Earl Copeland, William Patrick Flack, Frank E. Gibson, III, Nancy D. Hawk, and Gus Roberts. Kimberly T. Burch was a plaintiff intervenor. The defendants were Robert J. Sheheen, Nick Theodore, James B. Ellisor, and Governor Carroll A. Campbell, Jr. The defendant-intervenors were Robin Tallon, Neil A. Vander Linden, Forrest E. Ott, Philip T. Jones, Ann Y. Hart, Peggy A. Dufek, Gwendolyn L. Grooms, the South Carolina Senate, and the Democratic Party of South Carolina.

In the consolidated case of Blanton v. Campbell, C.A. No. 3:91-3635-1, the plaintiffs were Bufort Blanton, Neil A. Vander Linden, Forrest E. Ott, Ann Y. Hart, Peggy A. Dufek, and Vincent Johnson. The defendants were Governor Carroll A. Campbell, Jr., Nick Theodore, Robert J. Sheheen, James B. Ellisor, Dorchester County Legislative Delegation, State of South Carolina, Sherry Martschink, Stephen E. Gonzales, Annette Young, Sandra

S. Wofford, George H. Bailey, John W. Matthews, Jr., Michael T. Rose and the South Carolina Senate.

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JURISDICTIONAL STATEMENT

Opinions Below

The May 1, 1992, opinion and order of the three-judge court for the District of South Carolina, which implemented redistricting of the congressional and legislative districts in South Carolina, is unreported. It appears in the Appendix to the jurisdictional statement filed by the appellants Statewide Reapportionment Advisory Committee, et al., (hereinafter "SRAC") and is incorporated herein by reference. The May 15, 1992, judgment of the three-judge court is also unreported; it,

too, appears in the Appendix filed by SRAC and is incorporated herein by reference.

Jurisdiction

The order and judgment of the three-judge court for the District of South Carolina were entered on May 1, 1992, and May 15, 1992, respectively. Cross-appellant Governor Carroll A. Campbell, Jr. (hereinafter "Governor Campbell"), filed notice of appeal on June 1, 1992. See Appendix 1, infra.

This cross-appeal is being docketed in this Court within 60 days after the filing of the notice of appeal in the district court. The jurisdiction of this Court is invoked under 28 U.S.C. § 1253.

Constitutional and Statutory Provisions Involved

The constitutional and statutory provisions involved in the case are Article I, Section 2 of, and the First, Thirteenth, Fourteenth and Fifteenth Amendments to, the Constitution of the United States, Sections 2 and 5 of the Voting Rights Act, 42 U.S.C. §§ 1973 and 1973c, and Article III, Section 3 of the Constitution of South Carolina, the pertinent texts of which are set out in the SRAC Appendix and are incorporated herein by reference. Pertinent portions of 28 C.F.R. §51 are set out in the Appendix hereto.

Statement of the Case[1]

The cross-appellant is the Governor of South Carolina. He was a defendant in each of three actions which were consolidated below for trial by the three-judge court.[2]

The plaintiffs alleged, inter alia, that the congressional and state legislative districts (which were the districts implemented after the 1980 census) violated the Equal Protection Clause of the Fourteenth Amendment. The plaintiffs also sought the adoption of judicially approved plans for congressional and legislative districts which would comport with federal constitutional and statutory requirements of racial fairness. Contrary to the Order of the district court, none of the parties raised any claims based on Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

Following the 1990 federal decennial census, no redistricting plans for the State of South Carolina were enacted into law. On January 14, 1992, however, the General Assembly of South Carolina reconvened and adopted redistricting plans for the House and Senate.[3] The proposed House plan contained twenty districts in

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[1]In addition to the Statement of the Case provided herein, Governor Campbell adopts the Statement of the Case presented by SRAC.

[2]A three-judge panel was appointed pursuant to 28 U.S.C. § 2284(a) (1992).

[3]No plan for congressional districts was passed by the General Assembly.

which blacks[4] comprised a majority of the voting age population. The proposed Senate plan contained nine districts in which blacks comprised a majority of the voting age population.

Both of these plans were vetoed by the Governor. In his veto message to the State House, Governor Campbell explained that the House plan failed to draw a sufficient number of minority districts as required by federal law. See Appendix 7-18, infra.[5] In addition, the Governor noted areas of retrogression where districts in which the 1980 percentage of voting age black population had been reduced in the 1990 plans. The Governor urged each legislative body to enact redistricting plans which would comply with federal law.

Because the Governor's vetoes were sustained, and no plans were thereafter enacted, these suits were filed in an effort to break the legislative impasse, which was recognized as such by the district court. The consolidated cases were set for trial beginning on February 18, 1992.

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[4]Although there are other protected minorities in the population of South Carolina, black Americans are, by far, the largest minority population. As a result, the proceedings below and this appeal refer to all minority populations in terms of black population.

[5]The Governor's veto messages identified specific geographic areas where large minority concentrations were submerged or fractured and detailed each area of the State in which the black population was, in the Governor's opinion, sufficiently large and geographically compact to comprise a single member legislative district.

At trial, all parties stipulated that the existing districts were unconstitutional because of gross population disparities. Because those districts violated the constitution, the district court did not reach the question of whether the existing districts also violated Section 2 of the Voting Rights Act, 42 U.S.C. § 1973. The district court found that, because of the constitutional violations, the existing election districts could not be used for the 1992 elections. As a result, the court received evidence regarding a court-ordered remedial plan.

In its post-trial order, the court below applied a "retrogression" standard which purported to satisfy Section 2 of the Voting Rights Act, and concluded that "retrogression refers to diminution in minority opportunity from what it had been under an earlier plan." SRAC Appendix 26. The court asserted that the Department of Justice regulations pertaining to retrogression utilize this same benchmark: "In determining whether a submitted change is retrogressive the Attorney General will normally compare the submitted change to the voting practice or procedure in effect at the time of the submission. 28 C.F.R. § 51.54 (1991)." Id. The court rejected as a measure of retrogression the comparison of proffered plans one to another without reference to the existing districts, noting that "such methodology serves as a 'racial ratchet,' which presumes that the plan offering the greatest number of black majority districts is, for that reason alone and regardless of all other considerations, the benchmark against which all other plans must be measured." Id. at 30-31.

In assessing the application of § 2 to this case, the court stated:

> [I]t would be incongruous for the court to adopt a plan which did not comport with the standards and guidelines of § 2. The issue, however, is not whether § 2 considerations are considered -- they most certainly are; but rather, whether the court is obligated to completely graft the tests and requirements of § 2, including the searching evidentiary requirements, into a § 5 proceeding.

Id. at 38.

The court specifically held that "it is not obligated to completely import the standards and requirements of § 2 into a proceeding under § 5" because of the fundamental differences between § 2 and § 5, the "time factor" associated with the case, and the lack of a clear legislative intent or judicial interpretation that the results test of § 2 should be completely grafted onto § 5. Id. at 39-45.

Next, the court analyzed the proposed plans as well as the court-drawn plans based on the following factors: 1) the extent to which the plans proposed and the plans adopted are consistent with the retrogression standard; 2) the extent to which reasonable compact and contiguous majority black districts were and could be drawn; 3) the extent to which the minority group is politically cohesive; 4) the extent to which racially polarized voting patterns exist; and 5) the extent to which the lines which have been drawn limit the number of majority-black single-member districts in light of the expressed state policy of the State of South Carolina.

Each of the plans proposed by the parties created a larger number of black majority districts than the plan adopted by the court. The difference was that the court plan deferred to the state policies of preserving the integrity of county boundaries and avoided what the court described as the "political thicket" that arises in pitting large numbers of incumbents against one another. Id. at 75. The plans drawn by the court had a lower total number of majority/minority districts than did the parties' proffered plans. In addition, the court determined that the percentage of minority concentration necessary to create such a district was a mere 50%.

Substantial Questions Are Presented for Review

This Court has frequently stated that it notes probable jurisdiction because of the importance of the issues presented, e.g., Exxon Corp. v. Wisconsin Dep't of Revenue, 447 U.S. 207, 219 (1980); Davis v. Scherer, 468 U.S. 183, 189 n.7 (1984), or because of a conflict in the decisions of lower courts, e.g., Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155, 159 (1980); Ward v. Illinois, 431 U.S. 767, 770-71 (1977), or because of a conflict with a decision of this Court, e.g., Dombrowski v. Pfister, 380 U.S. 479, 483 (1965); Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 84 (1988). This case presents questions of substantial importance involving the application of the racial fairness standards of Section 2 to court-ordered legislative redistricting. The decision of the three-judge court is also in conflict with the decisions of other lower courts and the decisions of this Court.

1. Is the district court obligated to comply fully with the requirements of Section 2 of the Voting Rights Act in devising its own redistricting plan?

During the 1990 cycle of redistricting, state and federal courts in eleven states have redrawn congressional or legislative district lines after a legislative impasse has been recognized.[6] These court-ordered plans are the first such plans to have been drawn since Congress amended Section 2 of the Voting Rights Act in 1982 and since this

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[6]Alabama, Wesch v. Hunt, 785 F.Supp. 1491 (S.D. Ala. 1992), aff'd sub nom. Camp v. Wesch, 112 S.Ct. 1926 (1992), petition for cert. filed, (U.S. June 5, 1992)(No. 91-1992); Arizona, Arizonans for Fair Representation v. Symington, No. Civ. 92-256-PHX-SMM (D. Ariz. April 30, 1992); California, Wilson v. Eu, 823 P.2d 545 (Cal. 1992); Florida, DeGrandy v. Wetherall, TCA 92-40015-WS (N.D. Fla. July 17, 1992); Illinois, Hastert v. State Bd. of Elections, 777 F. Supp. 634 (N.D. Ill. 1991); Michigan, Good v. Austin, 91-CV-74754DT (E.& W. D. Mich. March 23, 1992); Minnesota, Emison v. Growe, 782 F.Supp. 427 (D. Minn. 1992) prob. juris. noted sub nom. Growe v. Emison, 112 S.Ct. 1557 (1992); New York, Puerto Rican Legal Defense & Educ. Fund v. Gant, 92-CV-1521 (E.D.N.Y. 1992); Oregon, Berkman v. Roberts, 91-775-RE (D. Ore. Dec. 2, 1991); South Carolina, Burton v. Sheehen, 1992 WL 106354 (D.S.C. 1992) (No. Civ. A. 3:91-2983-1, Civ. A. 3:91-3310-1, Civ. A. 3:91-3635-1); and Texas, Terrazas v. Slagle, 789 F.Supp. 828 (W.D. Tex. 1991) aff'd sub nom. Richards v. Terrazas, 1992 WL 24306, 60 U.S.L.W. 3554, 60 U.S.L.W. 3576, 60 U.S.L.W. 3870, 60 U.S.L.W. 3878 (U.S. June 29, 1992) (No. 91-1270).

Court decided Thornburg v. Gingles, 478 U.S. 30 (1986). Because Gingles was careful to disclaim any intention of setting standards for a dilution claim involving a single-member districting scheme,[7] lower courts have followed varying philosophies in applying Section 2 in the context of a court-drawn plan.

The original language of Section 2 paralleled the language of the Fifteenth Amendment. See City of Mobile v. Bolden, 446 U.S. 55, 60-61 (1980). In City of Mobile, a plurality held that discriminatory intent was required to establish a violation of Section 2. Therefore, in creating a court-drawn plan prior to the 1982 amendments, a court had only to avoid discriminatory intent to comply with its constitutional duty under the Fifteenth Amendment.

In response to this Court's ruling in City of Mobile, in 1982, Congress amended Section 2 to include a "totality of the circumstances" test to determine whether racial vote dilution had occurred. See S. Rep. No. 417, 97th Cong., 2d Sess. 118 (1982); Gingles, supra, 478 U.S. 30, 35 (1986).

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[7]"We note also that we have no occasion to consider whether the standards we apply to respondents' claim that multimember districts operate to dilute the vote of geographically cohesive minority groups, that are large enough to constitute majorities in single-member districts and that are contained within the boundaries of the challenged multimember districts, are fully pertinent to other sorts of vote dilution claims, such as a claim alleging that the splitting of a large and geographically cohesive minority between two or more multimember or single-member districts resulted in dilution of the minority vote." Id. at 47, n.12.

These amendments altered a drafter's duty from merely avoiding the subjective discriminatory intent standard and replaced it with the new, objective "totality of the circumstances" test. Based on this change in the law, legislatures and courts were then faced with the substantial question regarding the manner in which amended Section 2 of the Voting Rights Act should be applied when drafting redistricting plans.

In drafting court-ordered plans even prior to 1982, decisions of this Court recognized that federal courts have a "higher duty" in drafting redistricting plans than does a legislative body. Chapman v. Meier, 420 U.S. 1, 26 (1975). This higher duty is to insure that a court-ordered plan is "free from any taint of arbitrariness or discrimination." Roman v. Sincock, 377 U.S. 695, 710 (1964). When instituting a remedy, Connor v. Finch, 431 U.S. 407 (1977), requires the court to "allay suspicions and avoid the creation of concerns that might lead to new constitutional challenges." Id. at 425.

Based on this prior case law, most courts concluded that, in order to meet the "higher standard" required by Connor, Section 2 criteria should be used in drawing congressional or legislative plans. "In preparing our redistricting plans, we determined that it is important to eliminate, or at least minimize, any possibility of their being challenged under section 2." Wilson v. Eu, 823 P. 2d 545, 563 (Cal. 1992). "The plan must comply with the requirements of Section 2 of the Voting Rights Act." Good v. Austin, 91-CV-74754DT (E.& W.D. Mich., March 23, 1992) at 5-6. "The constitution and the Voting Rights Act must be satisfied before a court considers the neutral criteria." Arizonans for Fair Representation v. Symington, No. Civ. 92-256-PHX-SMM (D. Ariz. April 30, 1992) at 6. "We . . . analyze the [proffered] plans for any

discriminatory effects they may have on racial or language minorities solely under the terms of § 2 of the Voting Rights Act." Hastert v. State Board of Elections, 777 F.Supp. 634, 646 (N.D. Ill. 1991). "Though Gingles dealt with vote dilution in the context of multimember districts, courts in this Circuit have adopted the use of its test in single-member district litigation." Terrazas, supra, note 5, at 833.[8]

These courts concluded that, by evaluating Section 2 evidentiary issues during the drafting stage and implementing Section 2 criteria in the court-drawn plan, the court would avoid future Section 2 litigation for a decade. For example, by insuring that, wherever racially polarized voting was present, a majority district comprised of a sufficiently large and geographically compact minority population would be created, a court could meet, in advance, any minority group claim under the first prong of the Gingles test. This approach to Section 2 would also insure that minority voting strength was never diluted.

In contrast to that approach to drafting plans, the court below in this case refused to engage in the

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[8]In Alabama, the court was provided with a stipulation by the parties that the African-American population was "sufficiently compact and contiguous to comprise a single member significant majority (65% or more) African-American Congressional district." This "avoided the necessity of the court considering prolonged testimony regarding whether Section 2 of the Voting Rights Act requires the creation of such a district under the circumstances present in this case." Wesch v. Hunt, supra, note 6.

"searching and practical evaluations of past and present reality" required by Gingles and Section 2.

> The issue, however, is not whether Section 2 considerations are considered--they most certainly are; but rather, whether the court is obligated to completely graft the tests and requirements of Section 2, including the searching evidentiary requirements into a Section 5 proceeding . . . the court holds that it is not obligated to completely import the standards and requirements of Section 2 into a proceeding under Section 5.[9]

SRAC Appendix 38.

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[9]The court below never articulated which "tests and requirements" it refused to apply in what it characterized as a Section 5 proceeding. Presumably, the court below was referring to the three-pronged Gingles test (a minority group must be sufficiently numerically large and geographically compact to constitute a single member district, be politically cohesive, and be otherwise unable to nominate and elect its preferred candidates due to white racial bloc voting) and the seven typical factors identified in the 1982 Senate Judiciary Committee majority Report accompanying amended Section 2. These factors include a history of official discrimination, racially polarized voting, discriminatory voting devices, candidate-slating processes, socio-economic status of minority groups, use of racial appeals in elections and the success of minority candidates. S. Rep. No. 417, 97th Cong., 2d Sess. 28-29 reprinted in 1982 U.S. Code Cong. & Admin. News 206-207; Gingles, supra at 36-37.

The question whether full compliance with Section 2 is required of courts drafting court-ordered plans is substantial. If Section 2 tests and standards are not to be employed fully in drafting redistricting plans, what substitute standards are to be applied? How should a court measure the voting strength of minorities to determine if a proposed plan dilutes that strength? How can a drafter determine what concentration of voting strength (50.1% or 65%) is sufficient to insure that minorities have an equal opportunity to nominate and elect candidates of their choice? How many districts need to be drawn in order to insure compliance with the federal policy to insure fair group representation. In sum, if the court does not employ the Gingles tests and Senate standards, what is the measure of the Court's duty?

Last year in Chisom v.Roemer, 111 S.Ct. 2354 (1991), this Court rejected the use of judicially created limitations to restrict coverage under Section 2. In Chisom, the court stated that "[e]ven if serious problems lie ahead in applying the 'totality of circumstances' described in §2(b), that task, difficult as it may prove to be, cannot justify a judicially created limitation on the coverage of the broadly worded statute, as enacted and amended by Congress." Id. at 2368. The limitations on full Section 2 compliance in the decree of the court below suggests that this Court's guidance is needed to direct lower courts to comply with Section 2 and with the requirement that the Voting Rights Act "should be interpreted in a manner that provides the broadest possible scope in combatting racial discrimination". Id. at 2368, quoting Allen v. State Bd. of Elections, 393 U.S. 544, 567 (1969). Because the court below holds that some standard less than full Section 2 review applies, a substantial question is presented.

2. When a court seeks only to comply with Section 5 of the Voting Rights Act in devising a redistricting plan for a covered jurisdiction, must the court, nevertheless, comply fully with Section 2 as well, as required by the Attorney General's regulations for the implementation of Section 5?

Section 5 of the Voting Rights Act requires that any change in voting enacted by a covered jurisdiction be submitted for preclearance to the Attorney General or to a three-judge panel in the District of Columbia.[10] 28 C.F.R. § 51.1 Numerous jurisdictions are "covered", including the entire State of South Carolina.[11]

A district court's duty pursuant to Section 5 was defined in McDaniel v. Sanchez, 452 U.S. 130 (1981). McDaniel held that, whenever a covered jurisdiction submits a proposal reflecting the policy choices of the elected representatives, the preclearance requirement is applicable. The sole exception to this policy is "where the court, because of exigent circumstances, actually fashions the plan itself." Id. at 148-49. This Court justified that exception by reference to the legislative history

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[10]A Section 5 proceeding usually consists of an action for a declaratory judgment or an action to enjoin a jurisdiction from implementing an unprecleared voting change under 42 U.S.C. 1973c (1992). The lower court's characterization of this case as "arising under Section 5" is novel.

[11] For a listing of all covered jurisdictions, see the Appendix to 28 C.F.R. Part 51 (1991).

accompanying the legislation which extended the Voting Rights Act. "[I]n fashioning the plan, the court should follow the appropriate Section 5 standards, including the body of administrative and judicial precedents developed in Section 5 cases." Id. at 149, quoting S. Rep. No. 94-295, pp. 18-19 (1975).

Similarly, in 1982, when Congress undertook to amend the Voting Rights Act, it examined the continuing problems of non-compliance with Section 5, particularly with regard to statewide redistricting plans. The relevant section of the Senate Judiciary Committee Report discusses the relationship between Section 5 and amended Section 2 as follows. "In some of these cases [referring to the 1980 redistrictings] successive plans have been submitted and rejected several times." S. Rep. No. 417, 97th Cong., 2d Sess. 12 (1982). A note [Footnote 31] to this text explains:

> The continuing problem with reapportionments is one of the major concerns of the Voting Rights Act. As we have recognized before, even when changes are made for valid reasons, for example, reapportionment or home rule, "jurisdictions may not always take care to avoid discriminating against minority voters in the process."
>
> Under the rule of Beer v. United States, a voting change which is ameliorative is not objectionable unless the change "itself so discriminates on the basis of race or color as to violate the Constitution." In light of the amendment to section 2, it is intended that a section 5 objection also

> follow if a new voting procedure itself so discriminates as to violate section 2.

Id. (citations omitted).

Before 1987, the courts and the Attorney General followed the Section 5 standards which were restatements of judicial holdings such as Beer v. United States, 425 U.S. 130, 141 (1976); City of Lockhart v. United States, 460 U.S. 125 (1983); and Ketchum v. Byrne, 740 F.2d 1398 (7th Cir. 1984), cert. denied sub nom., City Council of the City of Chicago v. Ketchum, 471 U.S. 1135 (1985). In 1987, in response to the 1982 amendments to the Voting Rights Act and changes in decisional law, the Department of Justice amended its Section 5 regulations to add to the preclearance review process the "totality of the circumstances" test embodied in Section 2. See 28 C.F.R. § 51.55(b) (1991). Not only is the 1990 redistricting the first redistricting cycle to which the amended Section 2 standards apply, it is also the first to be measured by the amended Section 5 regulations.

The court below rejected the Governor's and SRAC's contention that, because Section 5 standards now include a Section 2 analysis, the court was obligated to apply Section 2 as directed by McDaniel, supra. Appellants' position was based, in part, on deference to the decision of an administrative agency interpreting its own regulations and on the legislative history, including footnote 31, that accompanied the 1982 amendments.

Appellants' contentions are also supported by other federal courts. In Terrazas, supra, note 6, the Texas panel examined the relationship between Section 2 and Section 5 and concluded:

> Since 1975, Texas has fallen within the scope of Sec. 5 of the Voting Rights Act... A Sec. 5 review is primarily concerned with whether the proposed change causes a retrogression in minority voting strength, though (Department of Justice) guidelines currently require the plan to be scrutinized for non-compliance with Sec. 2 ....

Id. at 833.

In this case, the court below reached a different conclusion:

> [W]e are not persuaded that in amending the provisions of § 2 in 1982 that Congress had the intent of amending the standard to be applied in § 5 actions. The proponents of such an incorporation cite footnote 31 of the Senate report at 12 which states that "in light of the amendment to § 2 it is intended that a § 5 objection also follow if a new voting procedure violates section 2." While this may be true, it does not necessarily speak to the standard the court is to apply to the § 5 objection. More to the point, in the vast consideration of both § 2 and § 5 during the amendments to § 2 in 1982, had congress intended to change the well-known standard applied to § 5 in Beer, it would not relegate such an important decision to a single footnote."

SRAC Appendix 44-45.

If this Court determines that Section 2 tests apply nationwide, then there would be no need to establish a

second, watered-down Section 2 test for covered jurisdictions. However, if only a weaker Section 2 analysis is required for all courts, as the lower court held in this case, then the further substantial question arises as to how the Section 5 regulations, incorporating Section 2 tests and standards, should be applied in covered jurisdictions.

> **3. In a state with a long history of racial discrimination, racially polarized voting and denial of minority voting opportunities, does a redistricting plan that provides for majority/minority districts in which equal opportunity is measured by only 50.1% of the black voting age population, satisfy the requirements of Section 2?**

Inherent in any review of redistricting proposals for racial fairness under amended Section 2, is the question whether the plan dilutes minority voting strength. In order to determine whether there is dilution, there must be a standard national policy gauging the "racial fairness" of single-member district plans. The Gingles opinion was a plurality opinion which left this question unclear.

Although Justice O'Connor's concurring opinion criticized the plurality's "maximum feasible minority voting strength" approach, she characterized the plurality's standard for vote dilution as follows:

> If, under a particular multimember or single-member district plan, qualified minority groups usually cannot elect the representatives they would be likely to elect under the most favorable single-member districting plan, then §2 is violated.

Gingles, 478 U.S. at 91.

If this test, as the plurality opinion would certainly appear to make it, is the test for a violation of Section 2, then the plan adopted by the court below is defective. Plans proffered by the parties created more black voting age population majority districts than did the court. For example, the Governor's plan for the legislature created two additional Senate districts with a majority black voting age population and ten additional House districts with a majority black voting age population.

There is also a substantial question how a court should determine what percentage of the protected group should comprise a majority/minority district. The two questions (1) number; and (2) percentage concentration of minority/majority districts are intertwined because the lower the percentage concentration required, the greater the number of minority/majority districts that can be configured. By using a 50% black voting age population standard, the court below should have been able to create more black districts; however, the opposite result was obtained in the court's plan: fewer districts were created and the ones that were created have lower concentrations of black voters than alternatives offered by the parties.

Because voting strength is measured by the number of districts which can be drawn, one first must articulate the standards to determine the percentage of the minority group necessary to comprise a minority district. Most courts have taken as their point of departure the 65% standard first articulated by this Court in United Jewish Organizations of Williamsburg, Inc. v. Carey, 430 U.S. 144 (1977). See e.g., Ketchum, 740 F.2d 1398; Neal v. Coleburn, 689 F. Supp. 1426 (E.D. Va. 1988); Rybicki v. State Bd. of Elections, 574 F.Supp. 1147, 1149 (N.D. Ill. 1983).

In fashioning relief for a Section 2 violation, the Coleburn court concluded that the 65% standard was a flexible and practical guideline. 689 F.Supp. at 1438. The 65% standard may, however, be "reconsidered and adjusted in the light of 'new information' and changing circumstances." Id. Traditionally, the "new information" would consist of higher registration rates among minority voters, heightened voter turnout figures or lower levels of racial bloc voting. Accord Rybicki, supra, at 1149. This is precisely the evidence which would be explored during a Section 2 evidentiary hearing. Without such evidence, a court is, as was the court below, rudderless.

As a result, instead of applying existing Section 2 tests and standards, the court below substituted its own standard:

> "[A] district may be considered a black opportunity district if the percentage of the black voting age population is greater than 50 percent . . . Our use of voting age population as the measure for effective opportunity obviates the need to consider a 65% percent figure as an absolute means of effective political opportunity."

SRAC Appendix 49.

The court below went on to state that it would take into account white incumbency in drafting its plans although it does not state the manner in which this analysis was to be achieved.

This substitute standard fails to measure the extent to which past historical discrimination results in lower voter registration and turnout. In a state marked by extremely high levels of racial polarization, such a

standard almost certainly will not grant minority voters an equal opportunity to nominate and elect candidates of their choice. The SRAC and the Governor, both presented uncontradicted evidence that a higher voting age population majority was necessary to insure that the minority community could nominate and elect candidates of their choice.

The only reason given by the court below for its use of the substitute standard is to leave unimpaired a minority group's ability to bring a subsequent Section 2 lawsuit. This rationale directly contradicts the generally stated goal of other courts to draft a plan which will avoid Section 2 challenges in the future.

The court below also determined that dilution of minority voting strength was to be judged under the standard that voting changes neither have the "purpose ... [nor] the effect of denying or abridging the right to vote on account of race." Unsurprisingly, the court concluded that, as a "given", it was not acting with racially discriminatory purposes. Id. at 25.

The court then examined its plans for retrogression under Beer, Lockhart and Ketchum. By using the retrogressions standard, the court determined only whether its plan reduced the number of seats in which minorities were in a majority in the prior census.

The retrogression standard may marginally improve the position of some black communities; however, it fails to eliminate completely the present day racial discrimination in voting which is required by Section 2. If, for example, the 1980 plan did not adequately measure the voting strength of minorities or if demographic changes had increased the voting strength of the minority, a retrogression analysis would fail to measure the undiluted

voting strength of minority voters. The adoption of the retrogression standard in the opinion of the court below created an artificially low measure of minority voting strength of only 21 House and Senate seats. For example, the Governor's plan (as did others) created both more Senate and House districts with black voting age majorities. The sole reason for rejection of these plans was to implement the proffered state policy of preserving county lines. It is obvious, however, that inflexible adherence to this policy reduces the voting strength of minorities.

The constitutional goal of "fair group representation" can only be achieved by proper measurement of undiluted voting strength. The functional "totality of the circumstances" approach calls for a "searching and practical evaluation of past and present political reality." The use of the retrogression standard by the court below, rather than the "totality of the circumstances" test, raises a substantial question.

4. Did the court err in giving greater deference to the state policy of maintaining county lines than to the federal requirement of racial fairness?

The court below identified county line integrity as an important state policy and, accordingly, sought to preserve the State's county lines in creating legislative districts. In fact, "[t]he only cognizable state policy the court considered was the preservation of county lines . . ." SRAC Appendix 62. The court erred by exalting a state policy over the federal requirement of racial fairness as expressed in Section 2. The court's insistence upon rigid application of this one state policy clearly had the effect of unnecessarily dividing and fracturing minority communities

in areas which could have been included in properly drawn minority districts, as illustrated by the Governor's plans.

While county line integrity may be a legitimate or acceptable redistricting criterion, it cannot be controlling as the only policy consideration. Rybicki v. State Bd. of Elections, 574 F.Supp. 1082 (N.D. Ill. 1982). More importantly, adherence to geographical units cannot overcome equal protection guarantees. See Connor v. Finch, supra.

Under the Supremacy Clause of the United States Constitution, Art. VI, § 2, the Voting Rights Act takes precedence over any state guidelines with which the Act may conflict. Reynolds v. Sims, 377 U.S. 533 (1964), recognized that, in the voting rights context, expressions of state policy choices are necessarily subordinate to federal requirements. "When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course controls." Id. at 584. Thus, the court below was not free to subordinate federal policies to perceived state interests.

The rule announced in Connor v. Finch requires configuration of legislative districts that comply with equal population principles, regardless of state policies which promote county line maintenance. A court must articulate reasons for departing from the population equality requirement. Similarly, in adopting a redistricting plan, a court has a corresponding duty to explain departures from the standards of Section 2 implementing federal policies of racial fairness. In the present case, the court below rejected the application of Section 2 standards which, as explained in the Governor's alternative plans, provided more minority districts than the court's own plan and had

less population deviation.[12] Quite clearly -- and quite

---

[12]The Governor's plan not only created more effective minority districts but also created more minority districts wholly within county boundaries, where the court's plan creates none. For example, in the Governor's House plan within Richland, Beaufort, and Charleston counties, three additional black voting age majority districts are created for which there is not even one corresponding House district in the Court's plan. In addition, even when county lines are crossed in the court's plan, the effect is not to create the black majority voting age districts which were feasible in those areas. For a demonstration of this phenomenon, compare:

	Court House District	Governor House District
In Georgetown County	103 50.01% BVAP	103 56.1% BVAP
	108 31.1% BVAP	108 15.3% BVAP
In McCormick and Greenwood Counties	12 32.5% BVAP	12 58.1% BVAP
	13 29.7% BVAP	13 13.2% BVAP
In Darlington and Marlboro Counties	56 29.6% BVAP	56 60.9% BVAP

BVAP = Black Voting Age Population

See Appendix 19, infra for maps and charts illustrating these differences graphically.

erroneously -- the court below maintained county line boundaries at the expense of the federal constitutional policy of racial fairness as expressed in Section 2. SRAC Appendix 72-73.

Conclusion

For these reasons stated, probable jurisdiction should be noted.

RESPECTFULLY SUBMITTED,

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APPENDIX

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App. 1

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

STATEWIDE REAPPORTIONMENT ADVISORY COMMITTEE, DR. WILLIAM GIBSON, BISHOP FREDERICK CALHOUN JAMES, REV. HERBERT WILLIAMS, WILLIE B. OWENS and SOUTH CAROLINA STATE CONFERENCE OF THE NAACP BRANCHES, Plaintiffs/**APPELLANTS**, vs. CARROLL A. CAMPBELL, JR., in his official capacity as Governor of South Carolina; NICK THEODORE, in his official capacity as Lieutenant Governor and presiding officer of the South Carolina Senate; ROBERT J. SHEHEEN, in his official capacity as Speaker of the South Carolina House of Representatives; and, JAMES B. ELLISOR, in his official capacity of Executive Director of the South Carolina State Election Commission Defendants/Appellees.	C.A. No. 3:91-3310-1

OF WHOM	)
	)
CARROLL A. CAMPBELL, JR., in his official capacity as Governor of South Carolina is **CROSS-APPELLANT.**	)
	)
KATHARINE I. BUTLER,	)
	)
Amicus Curiae	)
	)

(Filed June 1, 1992)

NOTICE OF CROSS-APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Defendant/Appellee Carroll A. Campbell, Jr., in his official capacity as Governor of South Carolina, hereby cross-appeals to the Supreme Court of the United States from the Order and final judgment of the three-judge district court, adopting and creating plans for the redistricting of South Carolina's Senate, House of Representatives, and Congressional districts following the 1990 decennial census, entered in the above action on May 1, 1992, and on May 20, 1992.

This cross-appeal is taken pursuant to 28 U.S.C. Section 1253.

Respectfully submitted,

/s/Charles E. Carpenter, Jr.
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Frederick A. Crawford/USDC#352
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ATTORNEYS FOR DEFENDANT/ APPELLEE-CROSS-APPELLANT, CARROLL A. CAMPBELL, JR., in his official capacity as Governor of South Carolina

Columbia, South Carolina

June 1, 1992

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson, Plowden, Grier & Howser, attorneys for Defendant/ Appellee-Cross Appellant, Carroll A. Campbell, Jr. in his official capacity as Governor of South Carolina, do hereby certify that I have served the following **NOTICE OF CROSS-APPEAL** by depositing in a United States Postal Service mail box three copies of the same, postage prepaid, this 1st day of June, 1992, addressed to the individuals indicated below:

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and Robert J. Sheheen

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/s/Sarah A. Pentz
Sarah A. Pentz, Secretary to
CHARLES E. CARPENTER, JR.

App. 8

STATE OF SOUTH CAROLINA

Office of the Governor

Carroll A. Campbell, Jr.
Governor

Post Office Box 11369
Columbia 29211

January 29, 1992

The Honorable Robert J. Sheheen
Speaker of the House
Room 506, Blatt Building
Columbia, South Carolina 29211

Dear Mr. Speaker:

I am returning without my signature H.3834 (R-259), the reapportionment Plan for the South Carolina House of Representatives.

I and my staff have carefully examined the districts that the House has drawn and have had extensive discussions with affected Representatives as well as representatives of minority groups concerning this plan. At the present time, the South Carolina House has 124 Representatives. During elections in the 1980's, racial minorities constituted a majority in 27 of the districts. From my review of the legislative debate, it became clear to me that more districts in which racial minorities comprise an effective majority could have been drawn. Alternative plans containing such proposals were introduced and defeated along racial and partisan lines. I think this action of the legislature was motivated by a desire to keep incumbents

in office at the expense of fairer minority representation. This is an unwise public policy.

Upon reviewing the objection letters from the United States Department of Justice concerning certain reapportionment plans in New York, Virginia, Georgia, North Carolina, Texas and Louisiana, I am convinced that the Justice Department would not preclear this plan as provided under Section 5 of the Voting Rights Act. Rather than delay the elections unnecessarily, I am returning this legislation in hopes that the House will remedy the following defects:

1. This plan fails to create additional minority districts:

It appears that lines could have been drawn in such a manner that minorities would have an equal opportunity to participate in elections and elect candidates of their choice. Several alternative plans which achieved this result were offered to the House but summarily rejected. These alternative plans created up to eight additional minority districts including:

A. An additional minority district in the Columbia area.

B. An additional minority district in the Charleston area.

C. An additional minority district in the Greenville area.

D. An additional minority district in Beaufort County.

E. An additional minority district in the Colleton-Hampton County area.

F. An additional minority district in Georgetown County.

G. An additional minority district in McCormick and Greenwood Counties.

2. Reducing minority populations in existing minority districts.

There has been noticeable retrogression in certain minority districts, particularly in District 70 in Richland County and District 23 in Greenville County. Upon review of the House Plan, there was a reduction of minority districts with a black population of 60% or more, from 15 districts under current law to 13 districts in the House Plan.

3. Fracturing of minority populations to benefit white incumbents at the expense of the creation of electable minority districts:

There are many areas of the state where minority districts could be created. Instead, these minority voting populations are fractured rather than combined to create effective minority districts as required under Federal law. The most obvious areas of fractured minority voting include the following districts:

A. Districts 67 and 64 in Clarendon and Sumter Counties fracture minority

voters to create a marginal minority district.

B. Districts 70 and 80 in Richland County fracture minority voters in Bluff precinct which results in retrogression in a minority district to benefit a white incumbent in District 80.

C. In Districts 72 and 73 in Richland County minority precincts are fractured to the benefit of a white incumbent in District 72 and resulting in one less minority district in Richland County.

D. Districts 93, 95, 96 and 66 fracture minority voters resulting in one less minority district.

E. Districts 108 and 103 fracture minority voters to create two ineffective districts rather than one effective minority district.

F. Districts 120-124 fracture minority voters resulting in a submergence of two minority districts.

G. Districts 109-118 fracture minority populations to benefit two white incumbents in Districts 118 and 110 rather than creating a minority district in this area.

H. Districts 41 and 43 fracture minority voters to benefit two white incumbents rather than create an effective minority district.

I. Districts 11, 12, 13 fracture minority voters to benefit three white incumbents rather than to create a minority district.

J. Districts 25, 24 and 28 fracture minority voters to benefit white incumbents rather than creating a minority district in District 25.

K. Districts 82, 39 and 81 fracture minority population rather than create a minority district.

L. Districts 60, 61, 65, 59, and 56 fracture minority populations to benefit white incumbents

rather than creating two additional minority districts.

M. Districts 9, 7 and 6 fracture minority populations to benefit white incumbents rather than creating one marginal minority district.

N. Districts 50, 68, 51, and 67 fracture minority populations to benefit white incumbents rather than creating effective minority districts.

By closely scrutinizing the House Plan, it appears minority districts were intentionally not drawn in order to further some political purpose--either to bolster existing voting strength of an incumbent or to shift the balance of political power in a county legislative delegation.

I have little choice but to veto the House Reapportionment Bill. If I were to do otherwise, it would be viewed as approval of a plan that violates principles established under Federal constitutional and statutory law. I am taking this action because I am convinced the General Assembly and the Governor have an obligation to create a reapportionment plan in compliance with Federal law. The Justice Department and the Federal Courts should not have to reapportion the legislature.

When my veto is sustained, I welcome the opportunity to discuss these specific changes in the legislation which

address my concerns in an equitable manner. This discussion should include the leadership of the House and Senate as well as with representatives of those minority groups that have expressed concern about the plans adopted by the House and Senate. I look forward to signing legislation that meets the requirements of Federal law.

Sincerely,

Carroll A. Campbell, Jr.
Governor

CAC,Jr./pwf

STATE OF SOUTH CAROLINA

Office of the Governor

Carroll A. Campbell, Jr.
Governor

Post Office Box 11369
Columbia 29211

January 29, 1992

The Honorable Nick A. Theodore
President of the Senate
State House, 1st Floor, East Wing
Columbia, South Carolina 29202

Dear Mr. President:

I am returning without my signature S.1003 (R-258), the reapportionment Plan for the South Carolina State Senate.

I and my staff have carefully examined the districts that the Senate has drawn and have had extensive discussions with affected Senators as well as representatives of minority groups concerning this plan. At the present time, the South Carolina Senate has 46 Senators. During elections in the 1980's, racial minorities constituted a majority in ten of the districts. From my review of the legislative debate, it became clear to me that more districts in which racial minorities comprise an effective majority could have been drawn. Alternative plans containing such proposals were introduced and defeated along racial and partisan lines. I think this action of the legislature was motivated by a desire to keep incumbents

in office at the expense of fairer minority representation. This is an unwise public policy.

Upon reviewing the objection letters from the United States Department of Justice concerning certain reapportionment plans in New York, Virginia, Georgia, North Carolina, Texas and Louisiana, I am convinced that the Justice Department would not preclear this plan as provided under Section 5 of the Voting Rights Act. Rather than delay the elections unnecessarily, I am returning this legislation in hopes that the Senate will remedy the following defects promptly:

1. This plan fails to create additional minority districts:

It appears that lines could have been drawn in such a manner that minorities would have an equal opportunity to participate in elections and elect candidates of their choice. Several alternative plans which achieved this objective were offered to the Senate but summarily rejected. Some alternatives include:

A. An additional district in the Savannah Valley region between the cities of Aiken and Anderson whereas the Senate created only influence districts in Districts 10 and 25 by fracturing minority voting populations in this area.

B. An additional district in Georgetown, upper Charleston, Williamsburg and Marion Counties, whereas the Senate plan fractures minority voters

between District 37, 34, 32 and 28, thus diluting their voting strength.

C. An additional district in Union, Spartanburg, York and Chester Counties, whereas the Senate plan fractures minority voters among Districts 13, 18, 16, and 27.

2. Marginal or non-electability of certain districts identified as majority minority population districts:

Of the 11 majority minority districts in the Senate proposal, District 40 has a total black population of 51.20% and black voting age population of only 49.226%. Other introduced plans created higher black population percentages in black districts. The Senate Plan therefore creates no more black districts than already exist. It is possible to create at least three other districts with a black voting age majority.

Other plans introduced in the Senate created more minority districts than the Senate plan. *At the same time,* these alternative plans had total black population and black voting age population percentages that were higher than almost all those districts in the Senate plan. The result of the lower black percentages in the Senate plan could very well be a deciding factor in elections in several districts.

The Senate Plan also did not create any open minority districts where a minority would not face the enormous task of a challenge against a well financed and entrenched white incumbent. Other plans introduced in the Senate

created as many as three districts where no incumbent currently resides.

3. Justifications for the Senate's failure to create additional minority districts are pretextual.

The Senate has offered two reasons for its failure to create additional minority seats or more electable minority districts. Comments by certain members of the Senate indicate that such districts were not created to avoid division of the criteria of communities of interests and split precincts.

Precincts are merely political instrumentalities drawn for political convenience. A quick review of the precincts in this State will show many have rambling boundaries created for reasons unknown or long forgotten. Many precincts have gone through enormous demographic changes. State law (Section 7-7-710) mandates that precincts be split when they achieve 1500 or more registered voters. Currently, the State Election Commission identifies 108 (5%) precincts that exceed 1500 registered voters. We have precincts that range in population as small as 37 people to as large as 27,000 people. These precincts have undergone little change and would be relatively easy to adjust through local legislation.

Local Bills are currently pending approval that would redraw precinct lines in several counties to conform with the census voting tabulation districts adopted throughout this reapportionment process. The precincts that are currently split in these two counties are split by VTD's not yet drawn as precincts in those counties.

In a recent review of one State's proposed redistricting plan (submitted to the Civil Rights Division of the Justice Department), the Assistant Attorney General expressed the following comments regarding this issue. "If such splits (of precinct) lines are necessary in order to adopt a proper plan, the county may then adjust its precincts to follow the new district lines. It is clear that where the Justice Department is concerned that the integrity of precinct lines is not to be used to dilute minority voting strength.

There are over 1800 precincts in this State, and even under the plan with the most split precincts, the splitting of existing precinct lines totals no more than 8% of all the precincts. Upon review of our current House Plan adopted during the last reapportionment, there are at least 225 split precincts, and the Senate districts under current law split approximately 130 precincts. The splitting of precincts was not a concern in the 1980's reapportionment. Its application now is tenuous.

Upon review of alternative plans, it appears the splitting of existing precincts was done for the purpose of meeting the first two criteria adopted by the Senate--one man one vote and the creation of minority districts. Alternative plans introduced in this Senate appear to properly split precincts in order to meet the two most important criteria in redistricting: "one man, one vote" and the effort to create minority districts where possible. These criteria are well-known, originating in federal statutory and case law and also adopted as guideline in early 1991 by the Senate.

The second justification for the failure to create additional districts is the maintenance of communities of interest. Upon my review of the Senate Plan for maintenance of

communities of interest, I have found at least four districts that certainly share little commonality or compactness.

A. Senate District 24--There clearly is no commonality or community of interest between suburban Columbia and Lexington County and suburban Augusta, Georgia, in a district that is connected by a point.

B. Senate District 16--York County, starting in suburban Charlotte (and crossing a lake at a point in the process) clearly does not share a community of interest with suburban Columbia.

C. Senate District 18--There is no commonality of interest in a district that goes from Chapin in Lexington County to the Spartanburg County line near Cowpens.

D. Senate District 34--There is no commonality of interest between the City of Conway in Horry County and Goose Creek in Berkeley County.

By closely scrutinizing the Senate Plan, one can conclude that minority districts were intentionally not drawn in order to further some political purpose--either to support an existing voting strength for an incumbent, or to shift the balance of political power in a county legislative delegation. A concern for compactness and communities of interest is not consistently applied. Rather, it is being

used to maintain the status quo by creating Senate districts that only maximize the opportunity for the re-election of some incumbents. I have little choice but to veto the Senate Reapportionment Bill. If I were to do otherwise, it would be viewed as approval of a plan that violates principles established under Federal Constitutional and statutory law. I am taking this action because I am convinced this reapportionment should be done correctly before the Justice Department and the Federal Courts reapportion the legislature.

When my veto is sustained, I welcome the opportunity to discuss these specific changes in the legislation which address my concerns in an equitable manner. This discussion will include the leadership of the House and Senate as well as with representatives of those minority groups that have expressed concern about the plans adopted by the House and Senate. I look forward to signing a plan that will meet the requirements of Federal law.

Sincerely,

Carroll A. Campbell, Jr.
Governor

CAC,Jr/pwf

GOVERNOR'S OFFICE
HOUSE PLAN
Richland County
DISTRICT BOUNDARY
COUNTY BOUNDARY
VTD BOUNDARY
JULY 1992
Scale 1 : 336430
85
77
79
80
73
72
71
74
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89
75
88
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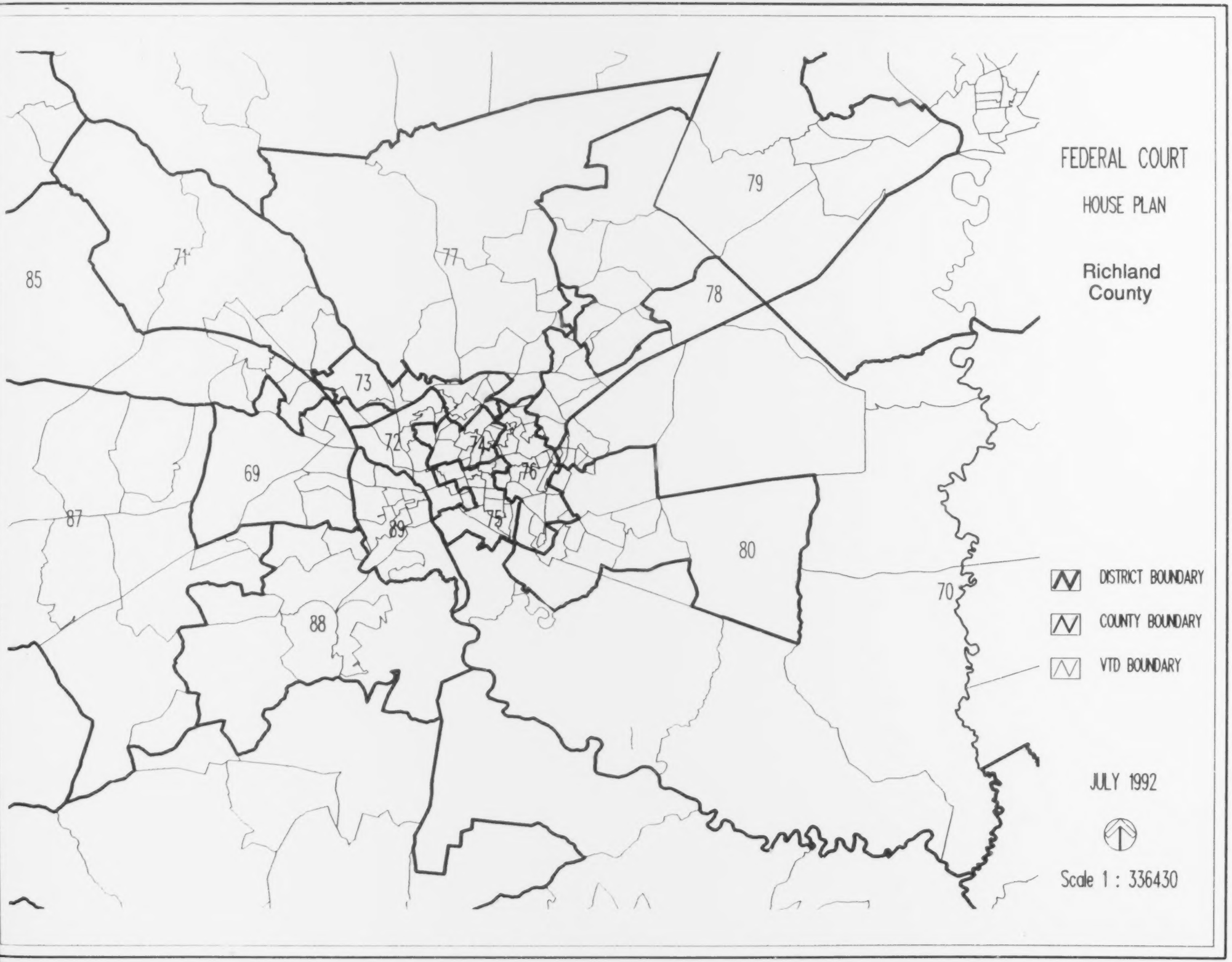
FEDERAL COURT
HOUSE PLAN
Richland County
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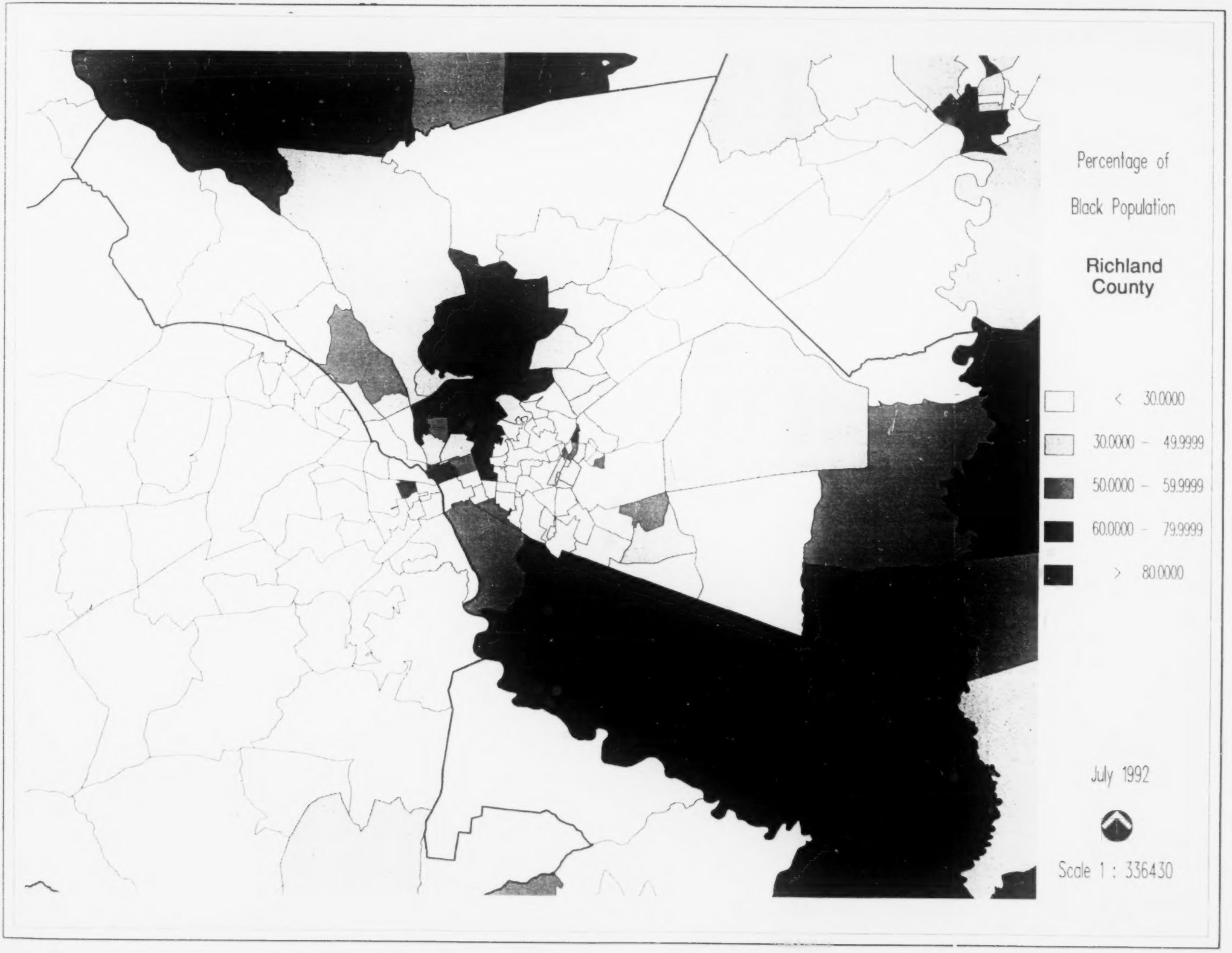
DISTRICT BOUNDARY
COUNTY BOUNDARY
VTD BOUNDARY
JULY 1992
Scale 1 : 336430


Percentage of
Black Population
Richland
County
< 30.0000
30.0000 - 49.9999
50.0000 - 59.9999
60.0000 - 79.9999
> 80.0000
July 1992
Scale 1 : 336430

GOVERNOR'S OFFICE

HOUSE PLAN

Beaufort County

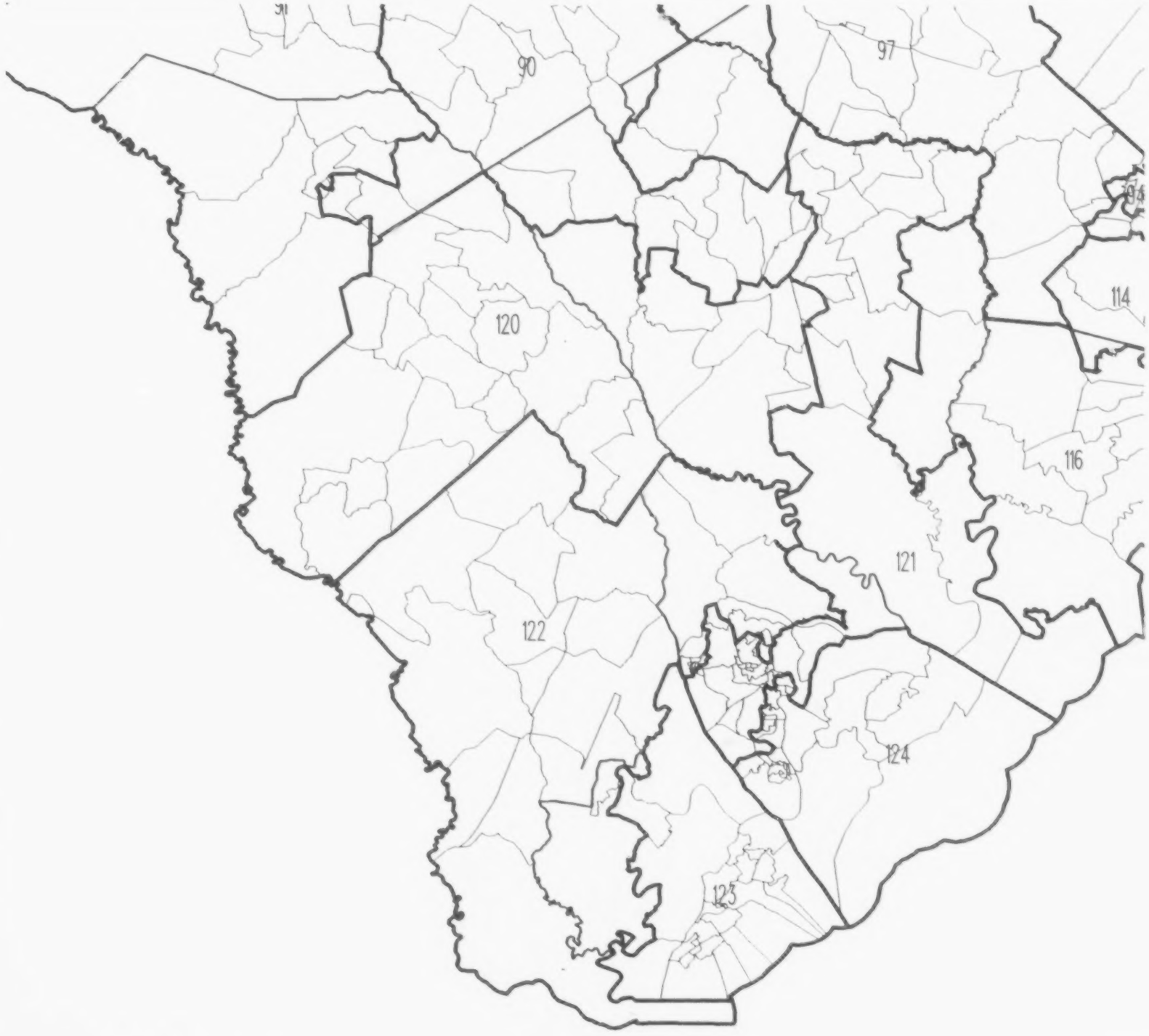
DISTRICT BOUNDARY

COUNTY BOUNDARY

VTD BOUNDARY

JULY 1992

Scale 1 : 694320



FEDERAL COURT

HOUSE PLAN

Beaufort
County

DISTRICT BOUNDARY

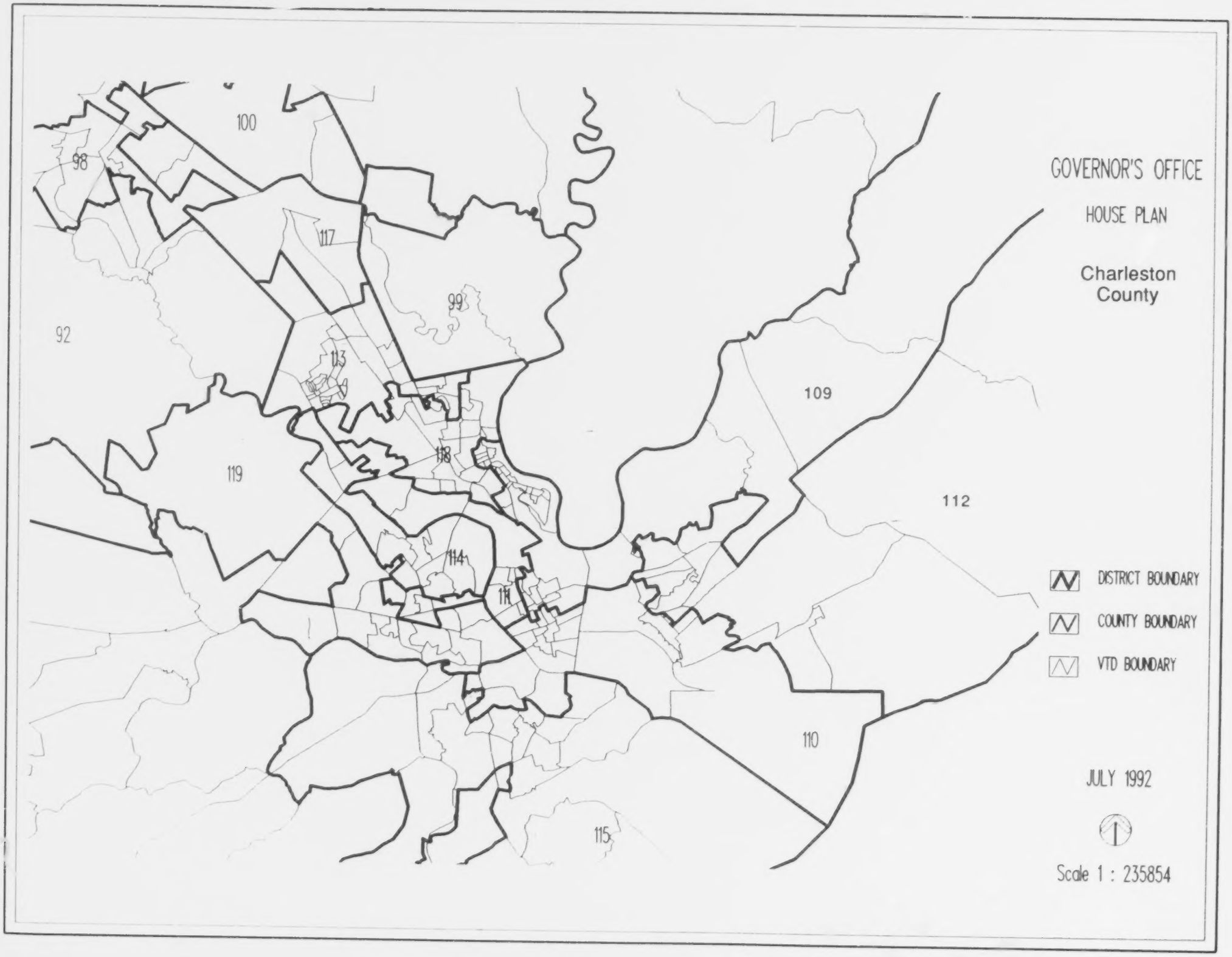
COUNTY BOUNDARY

VTD BOUNDARY

JULY 1992

Scale 1 : 694320

Percentage of
Black Population
Beaufort
County
< 30.0000
30.0000 - 49.9999
50.0000 - 59.9999
60.0000 - 79.9999
> 80.0000
July 1992
Scale 1 : 694320


GOVERNOR'S OFFICE
HOUSE PLAN
Charleston County
DISTRICT BOUNDARY
COUNTY BOUNDARY
VTD BOUNDARY
JULY 1992
Scale 1 : 235854
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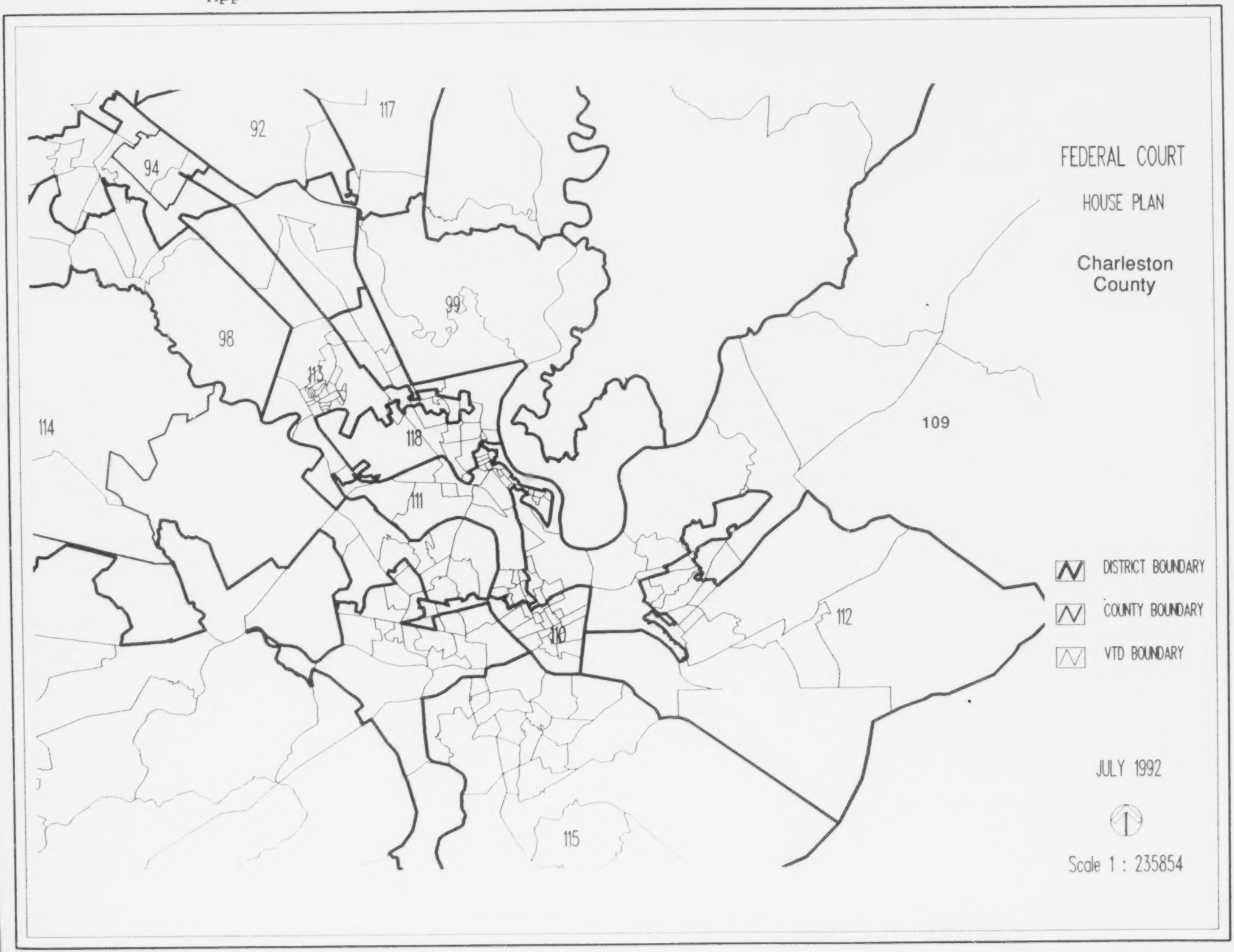
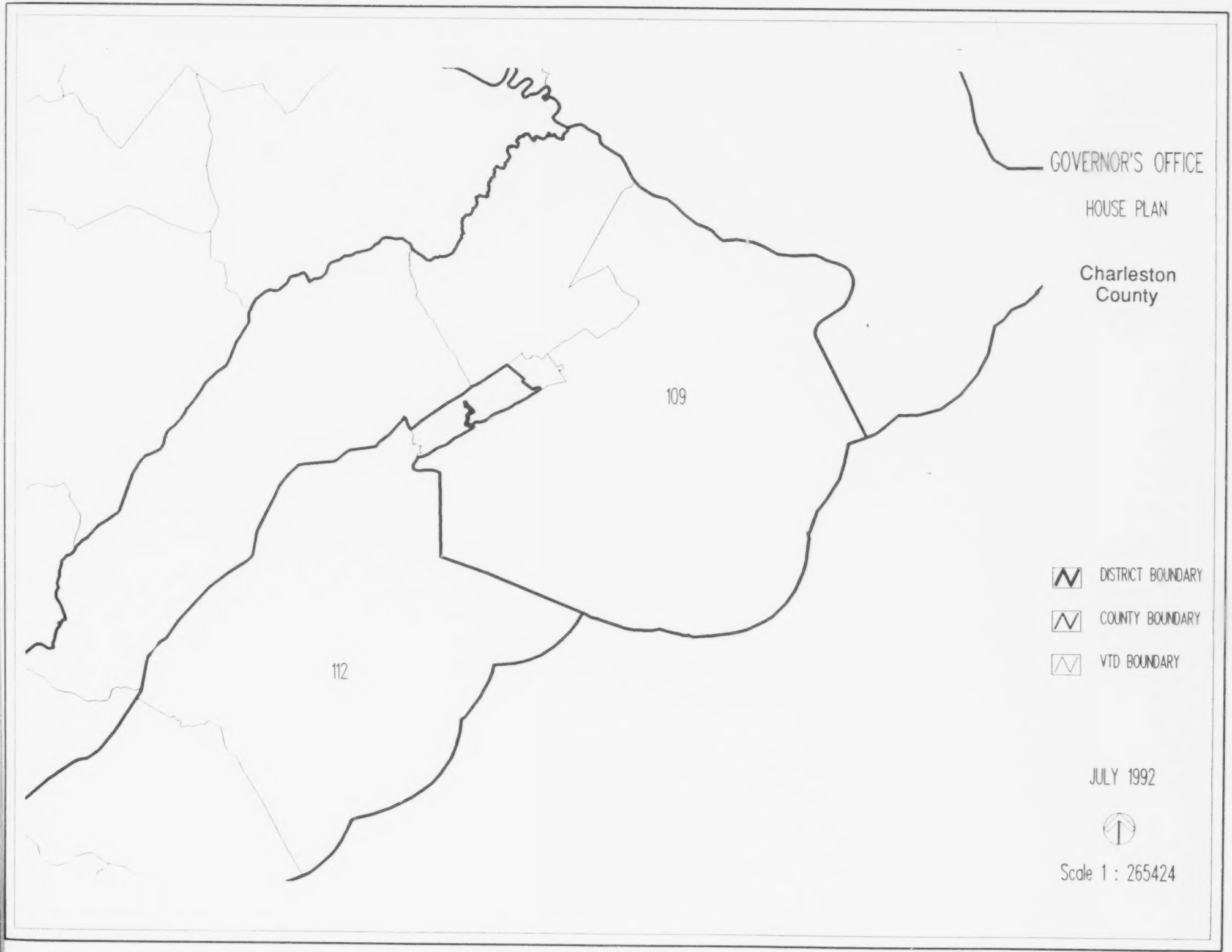
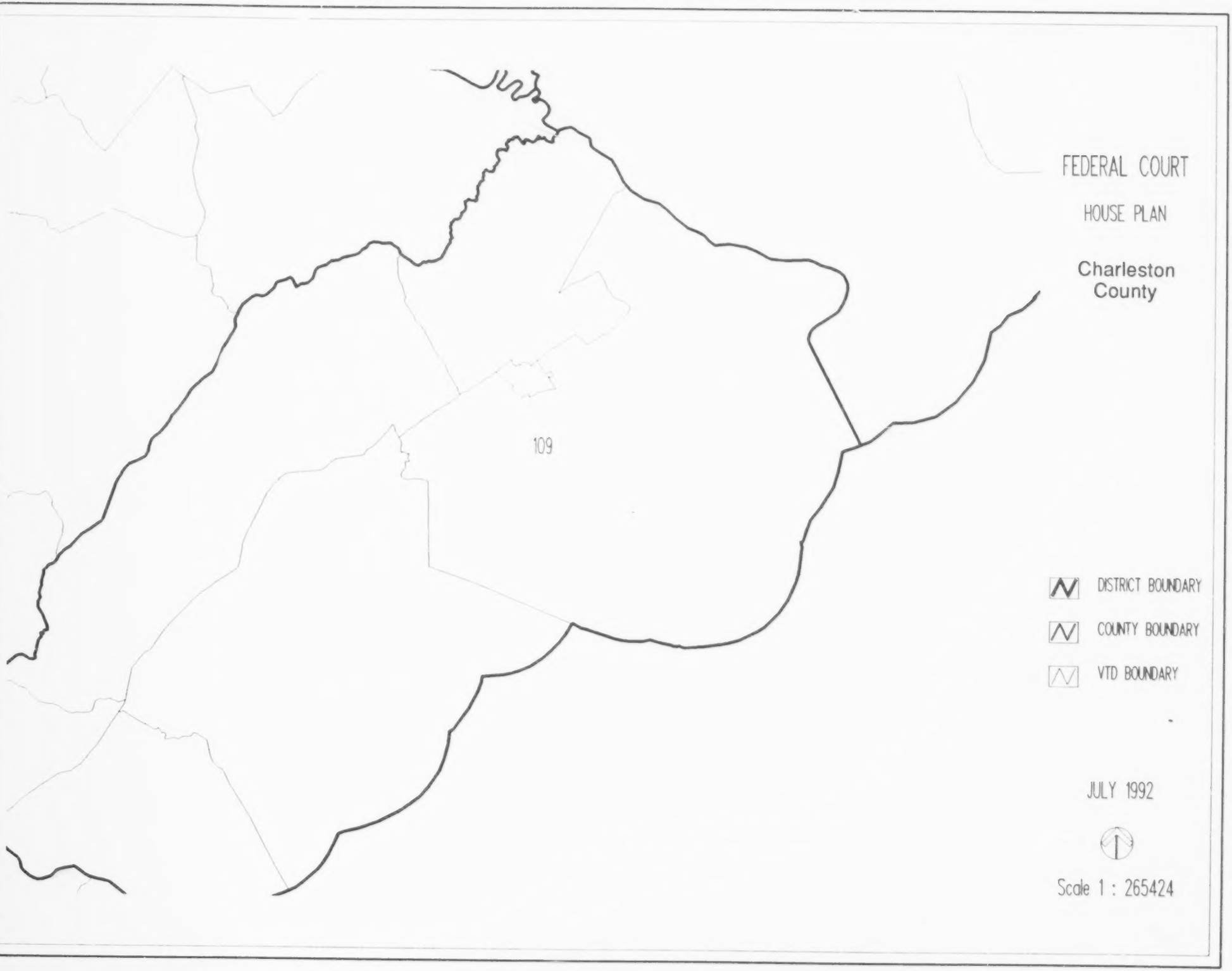
98
117
99
92
113
109
119
118
112
114
111
110
115

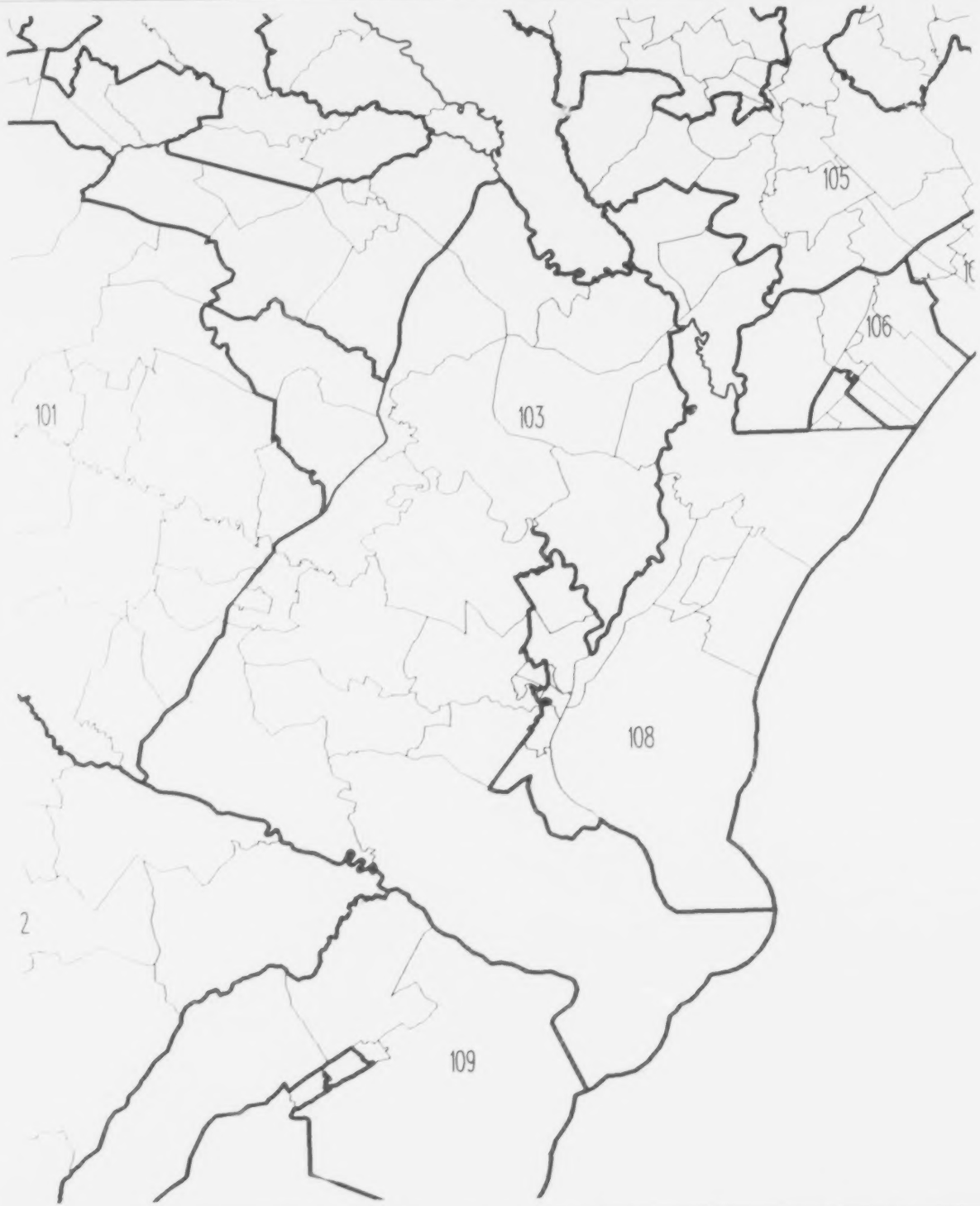

92
117
94
99
98
113
114
118
109
111
112
110
115
FEDERAL COURT
HOUSE PLAN
Charleston
County
DISTRICT BOUNDARY
COUNTY BOUNDARY
VTD BOUNDARY
JULY 1992
Scale 1 : 235854

Percentage of
Black Population
Charleston
County
< 30.0000
30.0000 - 49.9999
50.0000 - 59.9999
60.0000 - 79.9999
> 80.0000
July 1992
Scale 1 : 235854


GOVERNOR'S OFFICE
HOUSE PLAN
Charleston
County
109
112
DISTRICT BOUNDARY
COUNTY BOUNDARY
VTD BOUNDARY
JULY 1992
Scale 1 : 265424


FEDERAL COURT
HOUSE PLAN
Charleston
County
109
DISTRICT BOUNDARY
COUNTY BOUNDARY
VTD BOUNDARY
JULY 1992
Scale 1 : 265424

Percentage of
Black Population
Charleston
County
< 30.0000
30.0000 - 49.9999
50.0000 - 59.9999
60.0000 - 79.9999
> 80.0000
July 1992
Scale 1 : 265424



GOVERNOR'S OFFICE

HOUSE PLAN

Georgetown County

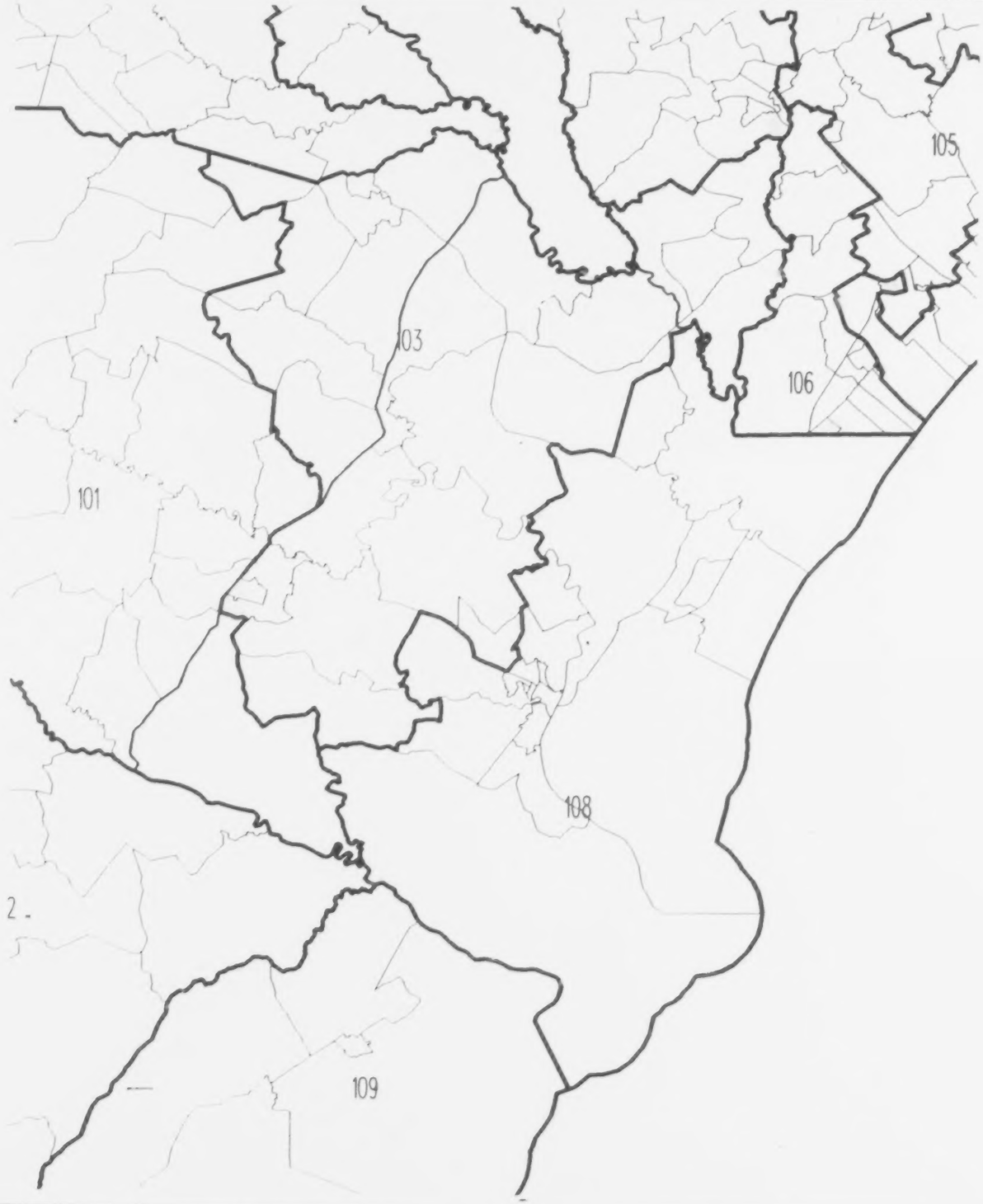
DISTRICT BOUNDARY

COUNTY BOUNDARY

VTD BOUNDARY

JULY 1992

Scale 1 : 539012



FEDERAL COURT

HOUSE PLAN

Georgetown County

DISTRICT BOUNDARY

COUNTY BOUNDARY

VTD BOUNDARY

JULY 1992

Scale 1 :-539012

Percentage of

Black Population

Georgetown County

< 30.0000

30.0000 - 49.9999

50.0000 - 59.9999

60.0000 - 79.9999

> 80.0000

July 1992

Scale 1 : 539012

GOVERNOR'S OFFICE

HOUSE PLAN

McCormick
&
Greenwood
Counties

DISTRICT BOUNDARY

COUNTY BOUNDARY

VTD BOUNDARY

JULY 1992

Scale 1 : 529876

FEDERAL COURT

HOUSE PLAN

McCormick
&
Greenwood
Counties

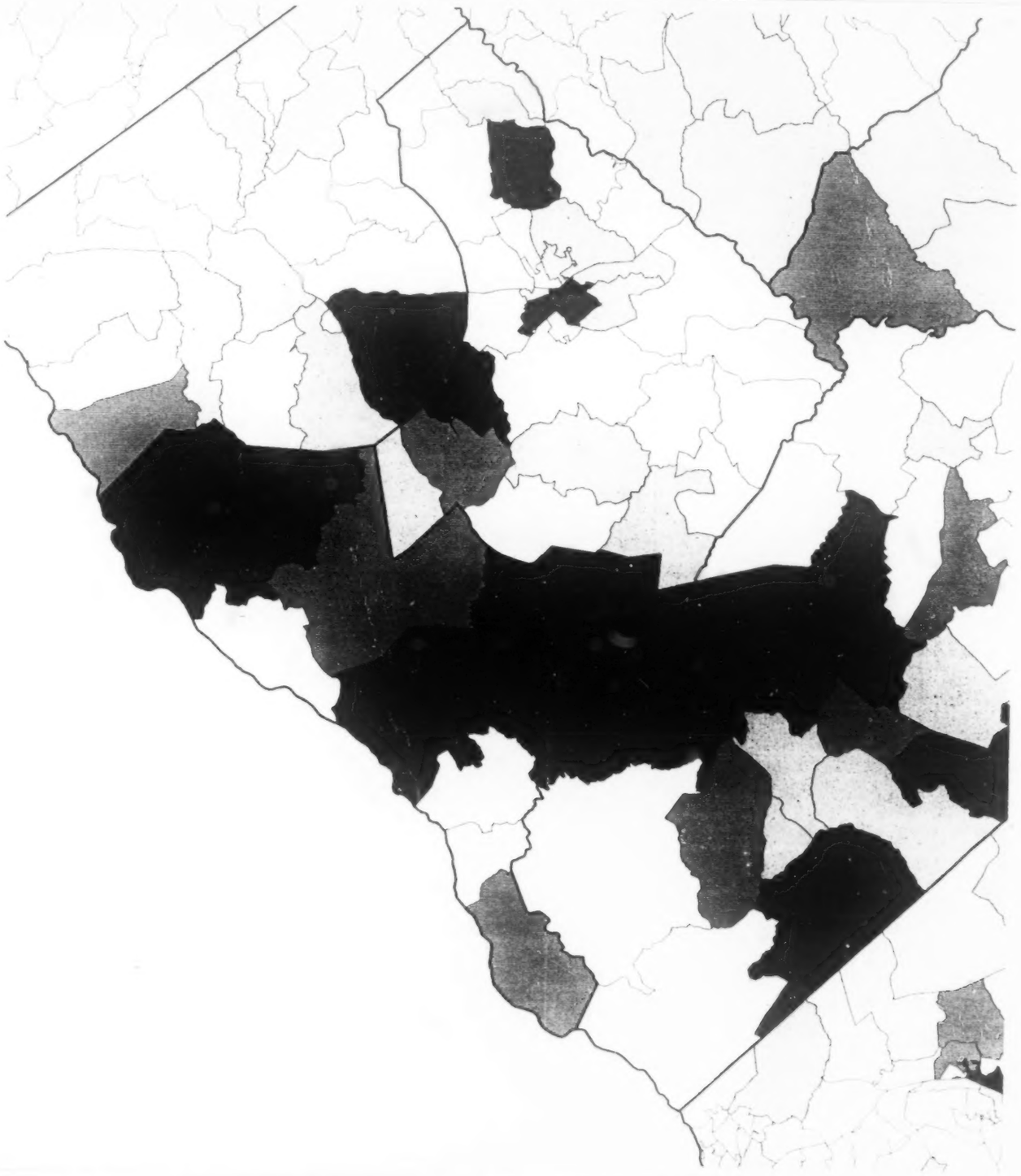
DISTRICT BOUNDARY

COUNTY BOUNDARY

VTD BOUNDARY

JULY 1992

Scale 1 : 529876



Percentage of

Black Population

McCormick & Greenwood Counties

< 30.0000

30.0000 - 49.9999

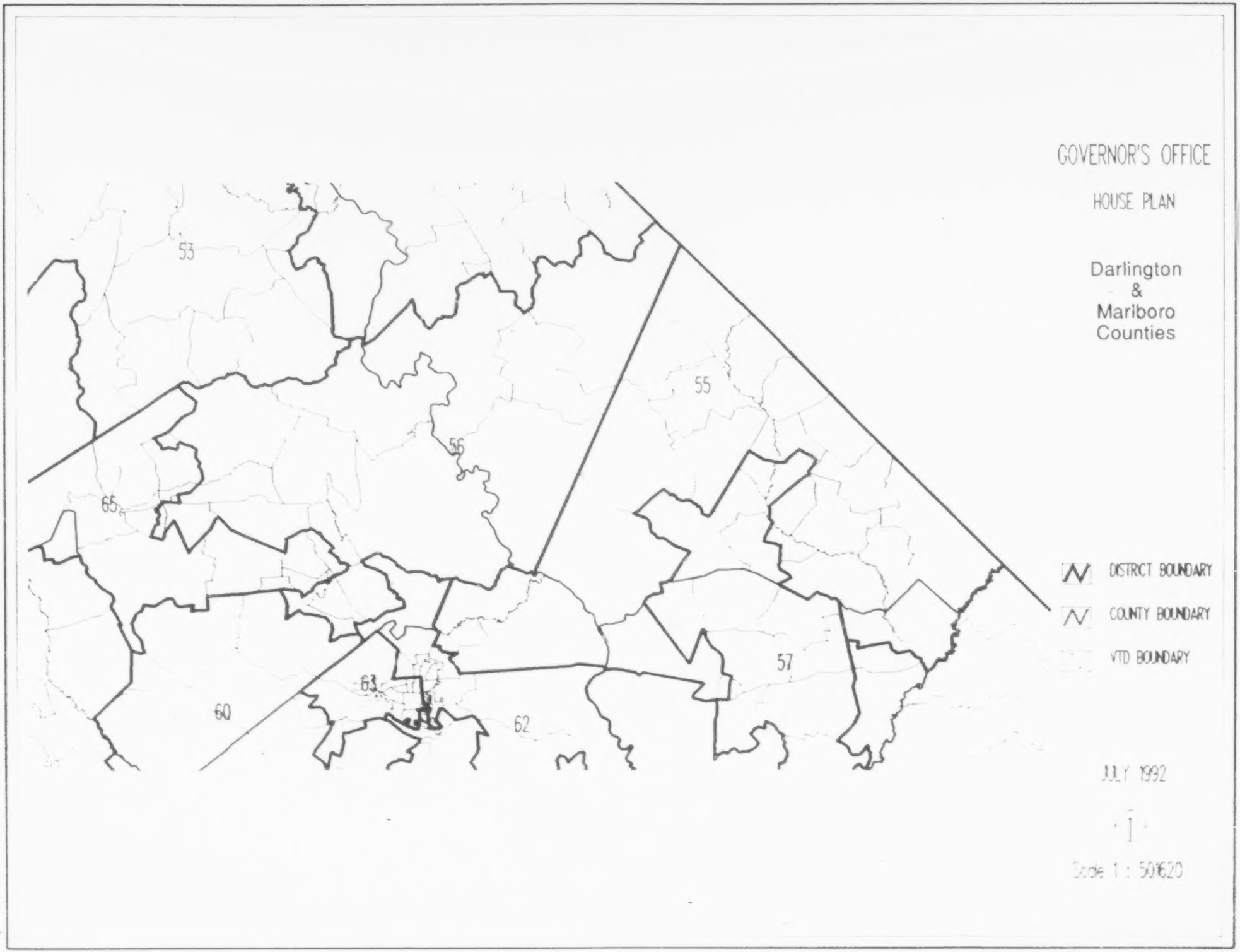
50.0000 - 59.9999

60.0000 - 79.9999

> 80.0000

July 1992

Scale 1 : 529876



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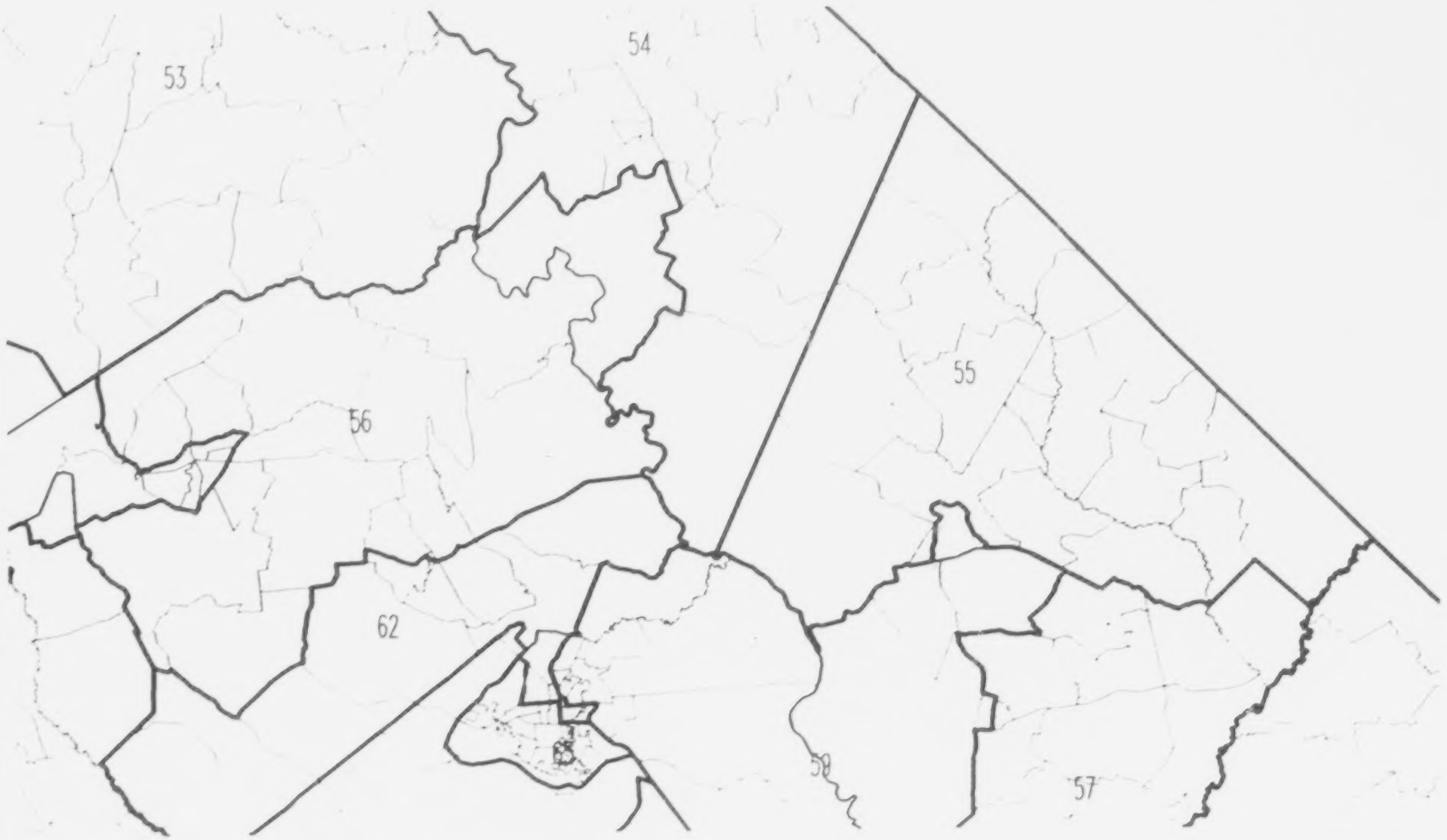

FEDERAL COURT

HOUSE PLAN

Darlington
&
Marlboro
Counties

DISTRICT BOUNDARY

COUNTY BOUNDARY

VTD BOUNDARY

JULY 1992

Scale 1 : 501620

Percentage of
Black Population
Darlington
&
Marlboro
Counties
< 30.0000
30.0000 - 49.9999
50.0000 - 59.9999
60.0000 - 79.9999
> 80.0000
July 1992
Scale 1 : 501620

Cherokee
Greenville
Spartanburg
York
Pickens
Oconee
Union
Chester
Lancaster
Chesterfield
Marlboro
Anderson
Laurens
Fairfield
Darlington
Dillon
Kershaw
Newberry
Lee
Marion
Abbeville
Greewood
Richland
Florence
Horry
Saluda
Sumter
McCormick
Lexington
Edgefield
Calhoun
Clarendon
Williamsburg
Aiken
Georgetown
Orangeburg
Berkeley
Barnwell
Bamberg
Dorchester
Allendale
Colleton
Hampton
Charleston
Jasper
Beaufort
SOUTH
CAROLINA

28 C.F.R. PART 51 - PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

§51.1 Purpose.

(a) Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, prohibits the enforcement in any jurisdiction covered by section 4(b) of the Act, 42 U.S.C. 1973b(b), of any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage, until either:

(1) A declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or

(2) It has been submitted to the Attorney General under section 5 and the interpretation of the Attorney General has interposed no objection within a 60-day period following submission.

(b) In order to make clear the responsibilities of the Attorney General under section 5 and the interpretation of the Attorney General the responsibilities imposed on others under this section, the procedures in this part have been established to govern the administration of section 5.

* * * *

§ 51.54 Discriminatory Effect.

(a) *Retrogression.* A change affecting voting is considered to have a discriminatory effect under section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively. See *Beer v. United States*, 425 U.S. 130, 140-42 (1976).

(b) *Benchmark.* (1) In determining whether a submitted change is retrogressive the Attorney General will normally compare the submitted change to the voting practice or procedure in effect at the time of the submission. If the existing practice or procedure upon submission was not in effect on the jurisdiction's applicable date for coverage (specified in Appendix) and is not otherwise legally enforceable under section 5, it cannot serve as a benchmark, and,

except as provided in paragraph (b)(4) of this section, the comparison shall be with the last legally enforceable practice or procedure used by the jurisdiction.

(2) The Attorney General will make the comparison based on the condition existing at the time of the submission.

(3) The implementation and use of an unprecleared voting change subject to Section 5 review under § 51.18(a) does not operate to make that unprecleared change a benchmark for any subsequent change submitted by the jurisdiction. See §51.18(c).

(4) Where at the time of submission of a change for Section 5 review there exists no other lawful practice or procedure for use as a benchmark (e.g., where a newly incorporated college district selects a method of election) the Attorney General's preclearance determination will necessarily center on whether the submitted change was designed or adopted for the purpose of discriminating against members of racial or language minority groups.

§ 51.55 Consistency with constitutional and statutory requirements.

(a) *Consideration in general.* In making a determination the Attorney General will consider whether the change is free of discriminatory purpose and retrogressive

effect in light of, and with particular attention being given to, the requirements of the 14th, 15th, and 24th amendments to the Constitution, 42 U.S.C. 1971(a) and (b), sections 2, 4(a), 4(f)(2), 4(f)(4), 201, 203(c), and 208 of the Act, and other constitutional and statutory provisions designed to safeguard the right to vote from denial or abridgment on account of race, color, or membership in a language minority group.

(b) *Section 2.* (1) Preclearance under section 5 of a voting change will not preclude any legal action under section 2 by the Attorney General if implementation of the change subsequently demonstrates that such action is appropriate.

(2) In those instances in which the Attorney General concludes that, as proposed, the submitted change is free of discriminatory purpose and retrogressive effect, but also concludes that a bar to implementation of the change is necessary to prevent a clear violation of amended section 2, the Attorney General shall withhold Section 5 preclearance.